IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:10.01.2006

CORAM

THE HON'BLE MR.JUSTICE P.JYOTHIMANI

W.P.NO.5454 OF 2002

Tirunelveli Diocese Trust Association
represented by it's Secretary
Mr.Selwyn Jeyaraj, CSI Diocesan Office
Tirunelveli - 2 ..Petitioner

Vs.

1.Ramachandran Pillai

2.Commissioner of Land Administration
Chepauk, Chennai - 5

3.District Revenue Officer
Tirunelveli District
Tirunelveli - 9

4.Revenue Divisional Officer
Tirunelveli

5.Thasildar
Palayamkottai Taluk
Tirunelveli District

6.N.Shanmugaraja
(R6 impleaded as per order dated
20.06.2002 in WPMP.No.17877/02) ..Respondents

Prayer: Writ petition under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus calling for the records in R.Dis.No.K4/40674/2000 on the file of the second respondent; to quash the order dated 23.01.2002 and consequently, to direct the fifth respondent not to include the name of the first respondent as joint patta holder in respect of S.No.149 (T.S.No.59/1),of palayamchettikulam village in palayamkottai Taluk, Tirunelveli District and to pass any other order this Hon'ble Court may deem fit and proper in the circumstances of the case.

For Petitioner : Mr.A.Immanuel
For Respondent 1 : Mr.T.R.Mani, SC for
: Mrs.Pushpa Sathyanarayana

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ORDER

This writ petition is filed challenging the order dated 23.01.2002 passed by the second respondent, under which, the second respondent, while setting aside the order dated 31.07.2000 passed by the District Revenue Officer, Tirunelveli, has directed the Revenue Divisional Officer to include the name of the first respondent as a joint pattadar in respect of S.No.149 (T.S.No.59/1), Palayamchettikulam Village, Palayamkottai Taluk, Tirunelveli District, along with the writ petitioner. The said impugned order was passed by the second respondent in the revision filed by the first respondent challenging the order dated 31.07.2000 passed by the District Revenue Officer, Tirunelveli.

2. The facts involved in the present case are as follows:

The petitioner is a registered minority religious trust. The trust has obtained 10.05 acres of land in S.No.149 in Palayamchettikulam Village on a perpetual lease from one Kumarasamiah Pillai under a lease deed dated 01.11.1927. The petitioner trust has also purchased another extent of 6.22.5 acres of land in S.No.149 in the same village from the said Kumarasamiah Pillai himself under a registered sale deed dated 07.12.1951. The petitioner trust has also purchased another extent of 7.25 acres of land from one Nellainayagam Pillai under a registered sale deed dated 31.03.1954. In addition to the said properties, the petitioner trust is in possession of 3.12 acres of land adversely for more than 100 years. After the death of Kumarasamiah Pillai, the first respondent, being his son, has succeeded to his properties. Problem arose in September 1996 when the Zonal Deputy Thasildar by his order dated 03.09.1996 included the name of the first respondent as a joint pattadar in Patta No.257. Based on the same, the first respondent also appears to have paid kist. According to the petitioner, the said order of the Zonal Deputy Thasildar was set aside by the Revenue Divisional Officer by his order dated 16.06.1999. On an appeal preferred by the first respondent before the third respondent namely, the District Revenue Officer, the third respondent by his order dated 31.07.2000, confirmed the order of the Revenue Divisional Officer namely, the fourth respondent, virtually setting aside the order of the Thasildar (R5). The first respondent again preferred a revision before the second respondent and the second respondent, by the impugned order dated 23.01.2002, set aside the order of the District Revenue Officer and confirmed the order of the Thasildar (R5) granting joint patta to the first respondent along with the petitioner trust. According to the petitioner, the first respondent sold 10.05 acres of land to the sixth respondent on 22.01.2001 and after having sold the said land to the sixth respondent, the first respondent filed a suit to the effect that what was sold was only one acre. The said sale by the first respondent to the sixth respondent took place when the revision before the second respondent was pending. In the mean

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time, the first respondent filed two suits in O.S.Nos.463/1997 and 70/1997, one praying for a declaration and possession against the petitioner and another for a permanent injunction not to put up any construction. By a common judgment dated 28.09.2001, both the suits were dismissed on the ground of limitation and also on the ground that there is already a hospital in existence in the suit property. The appeals filed by the first respondent in A.S.Nos.291/2001 and 52/2002 were also dismissed on 08.10.2003 and it is stated that the first respondent has filed S.A.No.1594/2004 before the Madurai Bench of this court, in which there is an order of stay and the appeal is pending. According to the petitioner, even though the impugned order states that the first respondent's name should be included as the joint pattadar, the fifth respondent chose to issue a separate patta in favour of the first respondent on 22.08.2003, against which, the petitioner filed an appeal before the fourth respondent, who confirmed the order of the fifth respondent by order dated 09.02.2004. The third respondent also confirmed the order passed by the fifth respondent by order dated 18.06.2004 and in the revision filed before the second respondent, he confirmed the order of the fifth respondent by order dated 16.08.2004. The petitioner also relies upon a letter dated 27.12.2004 of the Village Administrative Officer, wherein it is stated that the petitioner is in possession of 26 acres of land.

3. According to Mr.A.Immanuel, learned counsel appearing for the petitioner, while passing the impugned order, the second respondent had failed to consider the reasoning given by the Revenue Divisional Officer (R4). Further, the learned counsel, while relying upon the impugned order itself, would state that the second respondent had stated that "even though no clear title is produced by both the parties for the remaining extent of 10.28 acres out of 32.75 acres in S.No.149, it seems that Kumarasamiah Pillai has some right over the land". Learned counsel for the petitioner would also state that the second respondent has passed the impugned order granting joint patta, without even specifically mentioning as to what right the first respondent has got over the land in question. It is also the case of the petitioner that the petitioner is in possession of the entire property and therefore the question of joint patta does not arise.

4. On the contrary, Mr.T.R.Mani learned senior counsel appearing for the first respondent would support the impugned order passed by the second respondent. He would also state that when admittedly the petitioner is a lessee under the first respondent, by passing the impugned order, the petitioner's name is not deleted as a pattadar. He would also state that when it is the case of the petitioner that the property belongs to the school and the school, being not a juristic person, is not before court. Further, no evidence is let in to show that patta was given in the name of the school. He would also state that there is absolutely no quarrel about the perpetual lease

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given to the petitioner in respect of 10.05 acres of land either by the first respondent or by the sixth respondent. The perpetual lease, which will expire after 99 years, will necessarily revert back to the first respondent after the lease period is over. Therefore, it cannot be said that the first respondent has no interest at all. But on the other hand, on completion of the period of lease, the first respondent will become the exclusive owner. He would also submit that even in respect of the purchase of 6.22.5 acres of land, there can be no objection; the sale of 7.25 acres of land stated to have been purchased by the petitioner from Nellainayagam was the subject matter of O.S.No.370/1966; pursuant to the said sale, when the petitioner attempted to disturb the possession of the plaintiffs in that suit, who are the vendors of one John Pandian in respect of 6.22.5 acres of land, the said suit was decreed and the decree in the suit would show that what was purchased by the plaintiffs in that suit from Nellainayagam was not the suit property in O.S.No.370/1966. The said judgment was confirmed in the first appeal and also by this court in S.A.No.1653/1962. Therefore the apprehension of the sixth respondent is that, it is the petitioner, who wants to claim an extensive property other than those for which he has got a legal right and that is the reason for the present dispute. He also submitted that inasmuch as the petitioner's right has not been taken away in respect of the leasehold right by including the name of the first respondent as the joint pattadar along with the petitioner, the petitioner cannot have any grievance at all.

5. I have heard the learned counsel for the petitioner as also the learned counsel for the respondent. Perused the entire materials available on record.

6. As rightly contended by the learned counsel for the first respondent, a perusal of the impugned order would show that the said order was passed only in respect of 10.05 acres of land by including the name of the first respondent as the joint pattadar along with the petitioner. Inasmuch as, it is an admitted fact that the petitioner is a lessee under the first respondent, even though it is true that the petitioner has got a legal right over the property till he vacates and delivers vacant possession of the property or he is evicted in a manner known to law, the first respondent, being the owner of the property, has a right over the property since, after the completion of the lease period, the property has to necessarily vest with him. In that view of the matter, I am of the firm view that the order of the second respondent cannot be assailed in any manner and it can never be said that the petitioner alone should be given an individual patta. In the proceedings initiated under Act 26/1963, I do not think that the certificate relied upon by the petitioner stated to have been issued by the Village Administrative Officer that the petitioner is in possession of a vast extent of land, is going to be of any help to the petitioner. If the petitioner claims any civil right, then it is always open to him to proceed in accordance with law.

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The petitioner, in the settlement proceedings, cannot attempt to claim title to the property, which right is available to the petitioner elsewhere. It is also explained in the impugned order, that by decree dated 28.09.2001, the permanent lease stated to have been executed in favour of the petitioner was held to be invalid on the ground that the plaintiff therein failed to file a suit for recovery within 12 years. In any event, as already stated, that is not going to affect the petitioner's possession as a lessee unless and until, either the period of lease is over or the petitioner is evicted in a manner known to law. In view of the entire facts and circumstances of this case, there is nothing to interfere with the impugned order passed by the second respondent, which is perfectly in order, especially when the petitioner's right has not been taken away and the petitioner cannot have any grievance at all over the impugned order.

7. In the result, the writ petition fails and the same is dismissed. No costs. Connected miscellaneous petitions are closed.

Vsl

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. Commissioner of Land Administration
   Chepauk, Chennai - 5

2. District Revenue Officer
   Tirunelveli District
   Tirunelveli - 9

3. Revenue Divisional Officer
   Tirunelveli

4. Thasildar
   Palayamkottai Taluk
   Tirunelveli District

+ one cc to Government Pleader SR.No.1251
+ one cc to Mr.T.M.Hariharan, Advocate SR.No.1228

AK (CO)
RSM/18.1.2006

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